



JUDICIAL INVESTIGATION COMMISSION

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August 15, 2000

JIC Advisory Opinion 2000-35

Dear Mr. :

Your recent letter to the Judicial Investigation Commission in which you requested an advisory opinion has been reviewed by the Commission. In that correspondence you stated that you are a part-time juvenile referee and have a private law practice as well. You stated that you had been offered an opportunity to take over a legal malpractice case regarding a person who is the party nominee for prosecuting attorney in the county in which you are the juvenile referee. You believe the case has substantial merit and you think that it may be resolved before the election. You asked if there is an ethical problem about which you should be concerned and wonder what you can do if you take the case and the matter is not resolved prior to the election. You asked if taking the case would prohibit you from hearing cases involving the prosecuting attorney's office should he win. You asked whether you would be prohibited from hearing cases involving his office if you have resolved the case prior to the person taking office.

To address your request, the Commission reviewed Canon 3E(1) of the Code of Judicial Conduct. That Canon states in relevant part:

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

E. Disqualification - (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, . . .

The commentary to Canon 3E(1) states in relevant part "A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. See Tennant v. Marion Health Care Foundation, Inc. et al, 194 W.Va. 97, 457 S.E.2d 374 (1995)

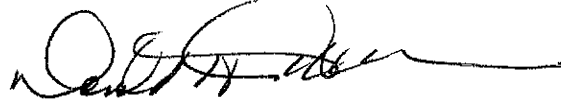
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Based upon the factual scenario presented to the Commission, it is their opinion that if you take over the legal case and the candidate does take office as prosecuting attorney you must at a minimum disclose that fact. It is quite likely that you should disqualify yourself if that individual were to appear before you in his capacity as prosecuting attorney. You could take the case and work on it so long as you complied with the disclosure requirements set forth in Canon 3E(1) and the recusal requirements set forth in that Canon.

It is hoped that this fully addresses the question which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald H. Cookman", with a long horizontal flourish extending to the right.

Donald H. Cookman, Vice-Chairman
Judicial Investigation Commission

DHC:nb